

SENATE BILL NO. 253

INTRODUCED BY V. COCCHIARELLA, DEPRATU, HIMMELBERGER, KITZENBERG, MAHLUM,
MATTHEWS, OLSON, TAYLOR, YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA RENTAL-PURCHASE AGREEMENT
ACT; REQUIRING THE DISCLOSURE OF CERTAIN INFORMATION FOR EACH RENTAL-PURCHASE
AGREEMENT; PROHIBITING CERTAIN PROVISIONS IN RENTAL-PURCHASE AGREEMENTS; PROVIDING
THAT A RENTAL-PURCHASE AGREEMENT MAY BE REINSTATED; REQUIRING WRITTEN RECEIPTS WHEN
PAYMENT IS MADE BY CASH OR MONEY ORDER; PROVIDING FOR THE RENEGOTIATION OR
EXTENSION OF A RENTAL-PURCHASE AGREEMENT; REQUIRING THAT CERTAIN INFORMATION BE
INCLUDED IN ANY ADVERTISING OF PROPERTY SUBJECT TO A RENTAL-PURCHASE AGREEMENT;
PROVIDING ENFORCEMENT PROVISIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~44~~ 12] may be cited as the "Montana
Rental-Purchase Agreement Act".

NEW SECTION. **Section 2. Purpose.** (1) The legislature finds that the rental-purchase industry is
unique in its structure of providing a service to Montana consumers, in that the business transaction
involved is not a credit transaction, does not create a debt or a security interest, and is not a simple rental
or lease. As a result, rental-purchase agreements deserve their own regulatory scheme.

(2) The purpose of [sections 1 through ~~44~~ 12] is to protect consumers and businesses engaged
in the rental-purchase of consumer goods against unfair or deceptive acts and practices and to provide
certainty and regularity in the conduct of rental-purchase transactions.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through ~~44~~ 12], the following
definitions apply:

(1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists,

1 directly or indirectly, a rental-purchase agreement but does not include price tags, window signs, or other
2 in-store merchandising aids.

3 (2) "Cash price" means the price at which the lessor would have sold the property to the
4 consumer for cash on the date of the rental-purchase agreement.

5 (3) "Consumer" means a person who rents personal property under a rental-purchase agreement
6 to be used primarily for personal, family, or household purposes.

7 (4) "Consummation" means the time that a consumer becomes contractually obligated by signing
8 a rental-purchase agreement.

9 (5) "Lessor" means a person who regularly provides the use of property through rental-purchase
10 agreements and to whom rent payments are initially payable on the face of the rental-purchase agreement.

11 (6) "Rental-purchase agreement" or "agreement" means an agreement between a lessor and a
12 consumer that has the following characteristics:

13 (a) the agreement governs the use of personal property by a person primarily for personal, family,
14 or household purposes;

15 (b) the agreement is entered into for an initial period of 4 months or less and is automatically
16 renewable with each payment after the initial period;

17 (c) the agreement does not obligate or require the consumer to continue renting or using the
18 property beyond the initial period; and

19 (d) the agreement permits the consumer to become the owner of the property.

20

21 **NEW SECTION. Section 4. Exemptions of applicability.** (1) The provisions of [sections 1 through
22 ~~11~~ 12] are not subject to laws relating to:

23 (a) retail installment sales contracts as defined in 31-1-202;

24 (b) security interests regulated by the provisions of Title 30, chapters 1 through 9;

25 (c) leases regulated by the provisions of Title 30, chapter 2A;

26 (d) personal solicitation sales defined in 30-14-502; and

27 (e) interest rates or loans on money as provided for in Title 31, chapter 1.

28 (2) The provisions of [sections 1 through ~~11~~ 12] do not apply to:

29 (a) a lease-purchase agreement primarily for business, commercial, or agricultural purposes or
30 agreements made with governmental agencies, political subdivisions, or organizations;

(b) a lease or bailment of personal property that is incidental to the lease of real property and that provides the consumer with no option to purchase the leased property; or

(c) the lease of a motor vehicle.

NEW SECTION. Section 5. Disclosure of information. (1) A lessor shall disclose to the consumer the information provided for in [section 6].

(2) The disclosure must be made at or before consummation of the rental-purchase agreement.

(3) The disclosure must be made clearly and conspicuously in writing and a copy of the rental-purchase agreement must be provided to the consumer.

(4) The disclosure information required under [section 6] must be provided for on the face of the contract above the line provided for the consumer's signature.

(5) If a disclosure becomes inaccurate as a result of any act, occurrence, or agreement by the consumer after the delivery of the required disclosure, the resulting inaccuracy is not in violation of [sections 1 through ~~11~~ 12].

NEW SECTION. Section 6. Information required in disclosure. For each rental-purchase agreement, the lessor shall disclose the following items in the agreement:

(1) the total number, the amount, and the timing of all rental payments necessary to acquire ownership of the property;

(2) a statement that the consumer will not have an ownership interest in the property until the consumer has made the total number of rental payments necessary to acquire ownership;

(3) a statement that the consumer is responsible for the fair market value of the property if the property is lost, stolen, damaged, or destroyed;

(4) a brief description of the rented property sufficient to identify the property to the consumer and the lessor. The description of the rented property may include an identification number and must include a statement indicating whether the property is new or used. A lessor is not liable for a statement that inadvertently describes property as being ~~new~~ USED if the property is ~~used~~ NEW.

(5) a brief description of any existing damage to the rental property;

(6) a statement of the cash price of the property. If the agreement involves the rental of more than one item as a set, in one agreement, a statement of the combined cash price of the items in the set may

1 be stated.

2 (7) the total of the initial payments paid or required at or before consummation of the
3 rental-purchase agreement or delivery of the property, whichever is later;

4 (8) (a) a statement that the total amount of the rental payment does not include taxes or other
5 charges and fees, including but not limited to:

6 (i) late payment;

7 (ii) processing;

8 (iii) default;

9 (iv) pickup;

10 (v) liability damage waiver;

11 (vi) insurance; or

12 (vii) other charges or fees that are necessary and appropriate; and

13 (b) the charges and fees identified in subsection (8)(a), itemized separately;

14 (9) a statement informing the consumer that the consumer has the right to exercise an early
15 purchase option;

16 (10) (a) a statement identifying the party responsible and a description of the responsibility for
17 maintaining or servicing the property while it is being rented; and

18 (b) if the property is covered by a manufacturer's warranty, a notice that the warranty is
19 transferred to the consumer if the consumer acquires ownership of the property and if the manufacturer's
20 warranty allows for the transfer;

21 (11) the date of the transaction and the identities of the consumer and the lessor;

22 (12) a statement that the consumer may terminate the agreement without penalty by voluntarily
23 surrendering or returning the property in good repair, except for ordinary wear and tear, on the expiration
24 of any rental term agreement along with any past-due rent payments, if any; and

25 (13) notice of the right to reinstate an agreement as provided in [section 8].

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27 **NEW SECTION. Section 7. Provisions prohibited in agreements.** A rental-purchase agreement may
28 not contain:

29 (1) a confession of judgment;

30 (2) a negotiable instrument;

(3) a security interest or any other claim of property interest in any property except the property delivered by the lessor pursuant to the rental-purchase agreement;

(4) a wage assignment;

(5) a waiver of claims or defenses by the consumer; and

(6) a provision authorizing the lessor or any person acting on the lessor's behalf to enter the consumer's premises or to commit any breach of the peace in the repossession of property.

NEW SECTION. Section 8. Reinstatement of agreement -- repossession. (1) A consumer who fails to make a timely rent payment may reinstate the agreement, without losing any rights or options that existed in the original agreement, by paying:

(a) all past-due rent payments;

(b) the next rent payment;

(c) reasonable pick-up and redelivery costs if the property was picked up by the lessor; and

(d) any applicable late fees.

(2) A consumer exercising the reinstatement option provided for in subsection (1) must provide the applicable payments to the lessor within:

(a) 5 days of the renewal date if the agreement specified a monthly payment schedule; or

(b) 2 days of the renewal date if the agreement specified a semimonthly payment schedule.

(3) If a consumer has not made two-thirds of the total payments necessary to acquire ownership of the property and has returned or voluntarily surrendered the property during the applicable reinstatement period established in this section, the consumer may reinstate the agreement during a period of not less than 21 days after the date of the return of the property.

(4) If a consumer has made two-thirds or more of the total payments necessary to acquire ownership of the property and has returned or voluntarily surrendered the property during the applicable reinstatement period established in this section, the consumer may reinstate the agreement during a period of not less than 45 days after the date of the return of the property.

(5) The provisions of subsections (3) and (4) do not apply to instances when the consumer returned or surrendered the property on an order from a court.

(6) This section does not prevent a lessor from attempting to repossess property during the reinstatement period, but the repossession does not affect the consumer's right to reinstate the

1 agreement. If the agreement is reinstated, the lessor shall provide the consumer with the same property
2 or substitute property of comparable quality and condition.

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4 NEW SECTION. Section 9. Written receipt for cash or money order. A lessor shall provide the
5 consumer, at the consumer's request, a written receipt for any payment made by cash or money order.

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7 NEW SECTION. Section 10. Renegotiation of rental-purchase agreement -- extension not
8 considered renegotiation. (1) A renegotiation of an agreement must occur when an existing agreement is
9 satisfied and replaced by a new agreement between the lessor and the consumer. A renegotiation is
10 considered a new agreement and requires new disclosures as provided for in [section 6]. The following
11 events may not be treated as a renegotiation:

12 (a) the addition or return of property in a multiple-item agreement or in the substitution of the
13 rental property, if in either case the average payment allocable to a payment period is not changed by more
14 than 25%;

15 (b) a deferral or extension of one or more periodic payments or portions of a periodic payment;

16 (c) a reduction in charges in the agreement; or

17 (d) an agreement involved in a court proceeding.

18 (2) An extension of an agreement is not a renegotiation.

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20 NEW SECTION. Section 11. Advertisement of rental-purchase agreement. (1) An advertisement
21 for an agreement that refers to or states the monetary amount of any payment and the right to acquire
22 ownership of property must clearly and conspicuously state:

23 (a) that the transaction advertised is a rental-purchase agreement;

24 (b) the total payments necessary to acquire ownership of ~~the property~~ ANY SPECIFIC ITEM; and

25 (c) that the consumer acquires no ownership interest if the total amount necessary to acquire the
26 property is not paid.

27 (2) An owner or employee of an advertising enterprise preparing or providing advertising to an
28 entity offering rental-purchase agreements is not liable for omissions or errors in advertisements.

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30 NEW SECTION. SECTION 12. ENFORCEMENT -- BONA FIDE ERRORS. (1) EXCEPT WHEN INCONSISTENT WITH

1 THE PROVISIONS OF [SECTIONS 1 THROUGH 12], A VIOLATION OF [SECTIONS 1 THROUGH 12] IS A VIOLATION OF TITLE
2 30, CHAPTER 14, PART 1.

3 (2) (A) A LESSOR MAY NOT BE HELD LIABLE FOR A VIOLATION OF THE PROVISIONS OF [SECTIONS 1 THROUGH 12]
4 IF THE LESSOR PROVES BY A PREPONDERANCE OF EVIDENCE THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED
5 FROM BONA FIDE ERROR DESPITE THE LESSOR'S MAINTENANCE OF PROCEDURES REASONABLY INTENDED TO AVOID THE
6 ERROR.

7 (B) (I) FOR THE PURPOSES OF THIS SECTION, A BONA FIDE ERROR INCLUDES BUT IS NOT LIMITED TO CLERICAL,
8 CALCULATION, COMPUTER MALFUNCTION, PROGRAMMING, AND PRINTING ERROR.

9 (II) AN ERROR OF LEGAL JUDGMENT WITH RESPECT TO A PERSON'S OBLIGATIONS UNDER [SECTIONS 1 THROUGH
10 12] IS NOT A BONA FIDE ERROR.

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12 NEW SECTION. Section 13. Codification instruction. [Sections 1 through ~~44~~ 12] are intended to
13 be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through ~~44~~
14 12].

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16 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
18 applications, the part remains in effect in all valid applications that are severable from the invalid
19 applications.

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21 NEW SECTION. Section 15. Effective date. [This act] is effective on passage and approval.

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23 NEW SECTION. Section 16. Applicability. [This act] applies to rental-purchase agreements that
24 are entered into on or after [the effective date of this act].

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